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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 171

STATE OF MARYLAND, EX RELATIONE
HAROLD H. CHANNELL,
Petitioner,

VS.

GEORGE J. MURPHY, CAPTAIN OF DETECTIVES, BALTIMORE CITY POLICE DEPARTMENT, BALTIMORE, MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari to the Court of Appeals of Maryland. Petitioner is held under a warrant of rendition issued by the Governor of Maryland under an extradition warrant from the State of California. He is charged by the State of California with burglary committed

on November 30, 1952 and December 1, 1952. Upon his refusal to waive extradition, a hearing was held by an Assistant Attorney General, which resulted in the Governor's issuance of the warrant of rendition. A Petition for a Writ of Habeas Corpus was then filed with the Baltimore City Court. That Court, through the Honorable Michael J. Manley, Associate Judge of the Supreme Bench of Baltimore, denied the Writ after hearing. From that denial, Petitioner filed an application for leave to appeal to the Court of Appeals of Maryland (Section 6 of Article 42 of the Annotated Code of Maryland (1951 Ed.) and Rule 49 of the Rules of the Court of Appeals of Maryland).

The application was considered by the Court of Appeals and rejected in a written opinion filed May 13, 1953, ... Md. ...., 96 A. 2d (Adv. Shts.) 473.

QUESTION PRESENTED

Does the record show, by competent, clear and satisfactory evidence that Petitioner was outside the State of California when the alleged crime was committed and consequently could not be a fugitive of justice?

STATEMENT OF THE FACTS

Respondent adopts the Facts as set forth on pages 3 through 12 of Petitioner's brief with the following additions and modifications:

(1) While the witness J. Newton Baker, who testified as a handwriting expert on behalf of the Petitioner, concluded that it was not Petitioner's handwriting which appeared on the registration cards of the Hollywood-Roosevelt Hotel, his testimony in support of this conclusion is at best uncertain (R. 94-105).

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On cross-examination, this witness testified that he had testified as a handwriting expert in approximately 100 cases, and that he had always qualified. However, it appears from a case which was quoted by the State's Attorney that a trial court of Pennsylvania had once refused to accept the witness' qualifications as a handwriting expert and that this action was sustained by the Supreme Court of Pennsylvania (R. 92-93).

(2) Mrs. Sascha Newman testified that she had flown from Los Angeles, California, to New York in something over nine hours (R. 47).

(3) Leland U. O'Conner testified that he is employed by the Chesapeake-Cadillac Company of Baltimore. A man by the name of Kirk owned two 1952 Cadillacs which he had serviced at the Chesapeake-Cadillac Company. Petitioner sometimes brought one of these cars in for servicing. The witness knew both Kirk and Petitioner. On December 12, 1952, Petitioner brought one of the Cadillacs to the garage and had the tires criss-crossed (R. 86-88).

ARGUMENT

DOES THE RECORD SHOW, BY COMPETENT, CLEAR AND SATISFACTORY EVIDENCE THAT PETITIONER WAS OUTSIDE THE STATE OF CALIFORNIA WHEN THE ALLEGED CRIME WAS COMMITTED AND CONSEQUENTLY COULD NOT BE A FUGITIVE OF JUSTICE?

This case involves the question of the propriety of the issuance of a warrant of rendition by the Governor of Maryland who thereby honored a demand by the State of California for the presence of Petitioner in that State as a fugitive from justice. No question is raised concerning the form or adequacy of the writ issued by the Governor of California. The federal question raised by Petitioner is

whether he is held contrary to Article IV, Section 2 of the Constitution of the United States and Section 5278, Rev. Stat., 18 U. S. C. A. Section 3182.

Petitioner does not question the well established law which is to the effect that the warrant issued by the Governor of an asylum State is *prima facie* sufficient to justify the arrest of the alleged fugitive and his delivery to the agent of the demanding State and that the burden is upon Petitioner to show beyond a reasonable doubt and by clear and satisfactory evidence that he was not in the demanding State when the alleged offense was committed. *State of South Carolina v. Bailey,* 289 U. S. 412, 77 L. Ed. 1292; *Illinois ex rel McNichols v. Pease,* 207 U. S. 100, 52 L. Ed. 121; *Munsey v. Clough,* 196 U. S. 364, 49 L. Ed. 515; *Hyatt v. New York,* 188 U. S. 691, 47 L. Ed. 657; *Audler v. Kriss,* .... Md. ...., 79 A. 2d 391; *Zack v. Kriss,* .... Md. ...., 74 A. 2d 25. See cases collected in 51 A. L. R. 797, and 61 A. L. R. 715. Nor does Petitioner appear to question the proposition that a "court will not discharge a defendant arrested under the Governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as habeas corpus is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused". *Munsey v. Clough, supra,* 196 U. S. at page 375; *Audler v. Kriss, supra,* 74 A. 2d at page 28. It is to be noted in passing that this Court has expressed doubt, as have other courts, as to the jurisdiction of the courts to review at all the executive conclusion that the person accused is a fugitive from justice of the demanding State. *Biddinger v. Police Commr.,* 245 U. S. 128, 62 L. Ed. 193; *Applegard v. Massachusetts,* 203 U. S. 222, 51 L. Ed. 161; *Grace v. Dugan,* 151 Miss. 267, 117 So. 596; *Ex Parte Germain,* .... Mass. ...., 155 N. E. 12.

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Petitioner does contend that the evidence presented by him in support of his contention that he was not in California on the crucial dates of November 30 and December 1, 1952, is so overwhelming that the evidence considered as a whole is not contradictory. This contention is without merit in light of the record. The State's witness Mrs. Sascha Newman testified that she saw Petitioner in California on December 1, 1952. He had entered her home and was discovered there by her under suspicious circumstances. Four witnesses for Petitioner testified that they saw Appellant in Baltimore on that date. The State's handwriting expert, an FBI agent whose qualifications were excellent, testified that Appellant signed the hotel register of a Los Angeles hotel which register showed arrival on November 27, 1952 and departure on December 2, 1952. The handwriting expert introduced by Petitioner, whose qualifications were anything but impressive, testified that Petitioner had not signed the California hotel register. Certainly, therefore, "the record discloses only a conflict of evidence", which is irreconcilable and in no sense has Petitioner established an overwhelming case.

Petitioner heavily relies upon the fact that he produced a greater number of witnesses than did the Respondent. This contention was answered by the Court of Appeals of Maryland, and it is submitted, correctly answered, when it said at page 475 of 96 A. 2nd (Adv. Shts.):

> "* * * The matter cannot be decided merely on the number of witnesses for and against the petitioner. In the case of State of South Carolina v. Bailey, 289 U. S. 412, 53 S. Ct. 667, 670, 77 L. Ed. 1292, the ratio was twelve witnesses who placed the accused in the demanding State at the time of the crime, to twenty who placed him then in the asylum State. The highest Court in North Carolina ordered the release of the peti-

tioner. The Supreme Court of the United States reversed, saying: 'The record presents an irreconcilable conflict of evidence. It is not possible to say with certainty where the truth lies'. The Court concluded that: 'Stated otherwise, he should not have been released unless it appeared beyond reasonable doubt that he was without the state of South Carolina when the alleged offense was committed and, consequently, could not be a fugitive from her justice'."

Petitioner also complains that the trial court misconceived its function when it stated that in a case of this kind it has not the authority to pass upon the credibility of the witnesses. Certainly it is the function of the trial court to judge the credibility of witnesses, and it is submitted that the court in this case did exercise that function. Respondent contends that this is borne out by a consideration of the statement of the trial court concerning its right to judge the credibility of the witnesses in context with other things said in its opinion. The opinion of the trial court reads in part as follows:

> "*The case is unusual in that a number of witnesses have testified for Mr. Channell — some of the witnesses I am acquainted with and have great respect for their integrity.* * * * *I am of the opinion that I do not have the right in a habeas corpus case of this kind to pass on the credibility of those witnesses.* As the Court pointed out in the Zach case this is not the kind of a case in which the question of guilt should be determined and it is not the kind of a case in which the genuineness of the alibi should be determined. It is unfortunate that I do not have the right because I have certain ideas of my own which it is unnecessary for me to state regarding the effect that should be given to that testimony. The witnesses here who testified knew Channell, they were familiar with him, they were acquainted with him, and they would have a better op-

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portunity to recognize him than some person who only saw him on one occasion. *My only problem is to determine whether the evidence offered by the State is overwhelming. I frankly state that if Mrs. Newman had not come here from California I would not hesitate to say that the testimony offered on behalf of Channell was overwhelming and I certainly would release him; that is I would accept that testimony as opposed to the hand-writing experts. But, we do have in the case the absolute, positive testimony of Mrs. Newman (a credible witness) which I feel under the law I have no right to ignore.* We also have in addition to her testimony, the testimony of Mr. Mesnik, the F. B. I. man, who positively identifies the signature which appears on the Hollywood Roosevelt Hotel registration as that of Channell, so that giving to the Governor's warrant the presumption of correctness to which it is entitled, *I cannot find from the evidence that has been produced here that it has been overwhelmingly shown beyond a reasonable doubt that Channell was not in California on the day that Mrs. Newman said he was.* I am not passing on the alibi. I have no right under the law to do that. Mr. Levin has stated to deny the writ would be to brand as perjurers the witnesses who appeared for Channell. That is not the situation. *I am acquainted with some of them for whom I have the highest regard and greatest respect;* the doll incident in particular was something that was an unusual occurrence and would tend to support Channell's position, but I have no right, I repeat again, to pass on the credibility of the witnesses. *My jurisdiction only extends to determining whether or not there is any credible testimony offered on behalf of the State or whether the testimony offered by Channell is overwhelming.*"

This statement reveals that the trial court did consider the credibility of the witnesses and did weigh testimony presented by the State against that presented by the Peti-

tioner. It is highly probable that the trial court spoke so evasively concerning its right to judge the credibility of the witnesses because of the fact that the court was acquainted with some of the witnesses presented by the Petitioner and held them in "the highest regard and greatest respect." It is understandable that the trial court did not wish to directly pass upon the credibility of these witnesses.

It is inconceivable that the trial court would be so irrational as to hear testimony from witnesses and then refuse, as the trier of the fact, to determine the weight of that testimony. The trial court did weigh this testimony and determined that Petitioner had not met the burden of proof required of him by the opinions of this Court and of the Court of Appeals of Maryland.

CONCLUSION

It is respectfully submitted, for the reasons stated herein, that the Petitioner has been denied no right under the Constitution of the United States or any statute passed pursuant thereto, and that the Petition should therefore be denied.

Respectfully submitted,

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